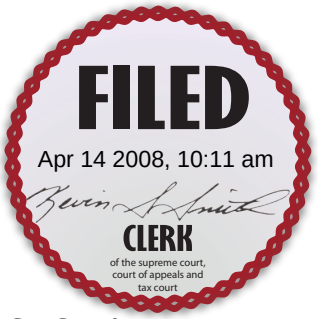

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IN THE
COURT OF APPEALS OF INDIANA

JUSTO A. CHAGOYA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 17A03-0704-CR-186
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEKALB CIRCUIT COURT
The Honorable Kirk D. Carpenter, Judge
Cause No. 17C01-0403-FB-8
17C01-0510-FB-6

April 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Justo Chagoya appeals his ten-year sentence for Class B felony dealing in a controlled substance. We affirm.

Issue

The sole issue before us is whether Chagoya's sentence is inappropriate.

Facts

On February 5, 2005, Chagoya gave a confidential informant five pills of hydrocodone (Vicodin), a schedule III controlled substance, in exchange for fifty dollars. The State charged Chagoya with Class B felony dealing in a controlled substance. While being arrested for this offense, Chagoya resisted police officers and the State charged him with two misdemeanor counts of resisting law enforcement. At the time of this arrest, Chagoya already was facing charges of two counts of Class B felony sexual misconduct with a minor that had been filed in 2004. In January 2007, the State added to that information a charge of Class A felony child molesting.

Chagoya agreed to plead guilty to Class B felony dealing in a controlled substance and Class A felony child molesting. The State agreed to dismiss the two sexual misconduct with a minor charges and the resisting law enforcement charges, not to file charges in another molestation case involving a different victim, and not to seek an habitual offender enhancement. Sentencing was left to the trial court's discretion, with a cap on executed time of forty years. On March 19, 2007, the trial court sentenced Chagoya to thirty years for the child molesting conviction and ten years for the dealing

conviction, to be served consecutively for a total term of forty years. Chagoya now appeals.

Analysis

Chagoya challenges only his ten-year sentence for Class B felony dealing in a controlled substance. Indiana Appellate Rule 7(B) provides that we may revise a sentence if we find that it is inappropriate in light of the nature of the offense and the character of the offender. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

Chagoya claims the nature of the dealing offense was very minor and warrants the minimum sentence for a Class B felony, six years, and not the advisory sentence of ten years. See Ind. Code § 35-50-2-5. Even if we were to assume, without deciding, that the nature of the offense was relatively trivial, Chagoya's character warrants the advisory sentence.

Chagoya has multiple criminal convictions of various levels of severity, beginning in 1970 when he turned eighteen. The offenses range from trespass and theft to child molesting and dealing in LSD. Chagoya was not released from parole for the LSD conviction until 2002, and he committed the present controlled substance offense just three years later. During the same time period as this offense, he was convicted of at

least one other child molestation and suspected of others. In fact, he was on bond for the sexual misconduct with a minor charges when he committed this offense. He admitted regular use of illicit substances throughout his life. He has five children but has never paid regular support for any of them. No matter how "minor" the nature of the controlled substance offense, Chagoya's character clearly demonstrates that the advisory sentence for that offense is appropriate.

Conclusion

Chagoya's ten-year sentence for Class B felony dealing in a controlled substance is not inappropriate. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.